

they are about to assault this Constitution and the rules of the Senate to try to achieve that goal.

This so-called nuclear option is a power grab. It is an attempt to change the rules of the Senate. It is an assault on the principle and value of checks and balances. It is an attempt by the majority party in the Senate to ram through nominees who will not pledge to protect the most important rights of the American people. It is an attempt to say we cannot demand of the President's nominees that each person be balanced and moderate and committed to the goals of ordinary Americans. The fact that the President has had 205 nominees approved and only 10 rejected is not good enough. He wants them all.

This is not the first President in history who has decided in his second term to take on the courts of our country, to say he wanted to put into that court system men and women who agreed with him politically at any cost. The first was one of our greatest Americans, Thomas Jefferson. Full of victory in his second term, he decided to attempt to impeach a Supreme Court Justice who disagreed with him politically, to show he had the political power, having just been re-elected. His efforts were rejected. They were rejected by his own party, his own party in the Senate, who said: Mr. President, we may be part of your party, but we disagree with this power grab.

We are going to protect the constitutional rights and power of our institution of the Senate.

More recently, President Franklin Delano Roosevelt—one of the greatest in our history—as his second term began, became so frustrated by a Supreme Court that would not agree with him, that he sent to the Senate a proposal to change the composition of the Court to make certain that we filled the bench across the street in the Supreme Court with people who were sympathetic to his political agenda. He sent that legislative proposal to a Congress dominated by his political party, by his Democratic Party. What was their response? They rejected it. They said we stood by you in the election, we will stand by your policies, but we will not allow you to abuse this Constitution. We will not allow you to change the rules so you can have more power over our judges. That was the principle at issue. Frankly, Roosevelt lost the debate when men and women of his own party stood up and opposed him in the Congress.

Thomas Jefferson lost the same debate.

Here we go, again. For the third time in our Nation's history, a President, as he begins his second term, is attempting to change the rules of the Senate to defy the Constitution and to give the Office of the President more power to push through judges, to defy the checks and balances in our Constitution.

I don't believe I was elected to the Senate to be a rubber stamp. I believe

I was elected and took the oath of office to uphold this Constitution, to stand up for the precedents and values of Congress and our Nation. We need to have, in our judiciary, independence and fairness. We need to have men and women on the bench who will work to protect our individual rights, despite the intimidation of special interest groups, despite the intimidation of Members of Congress. They need to have the courage to stand up for what they believe, in good conscience, to be the rights and freedoms of Americans.

I speak, as a Senator on the Democratic side, and tell you that our 45 Members will not be intimidated. We will stand together. We understand these lifetime appointments to the bench should be subject to close scrutiny, to evaluation, and to a decision as to why they are prepared to serve and serve in a way to protect the rights and aspirations of ordinary Americans.

The filibuster, which requires that 60 Senators come together to resolve the most controversial issues, that rule in the Senate, forces compromise. It forces the Republicans to reach across the aisle and bring in some Democrats when they have very controversial legislation or controversial nominees. It forces bipartisanship—something that tells us, at the end of the day, we will have more moderate men and women who will serve us in the judiciary. Those who would attack and destroy the institution of the filibuster are attacking the very force within the Senate that creates compromise and bipartisanship.

Those who are forcing this nuclear option on the Senate are not just breaking the rules to win, but they want to break the rules to win every time.

Despite the fact that President Clinton had over 60 judicial nominees who never received a hearing and vote when the Republicans were in control of the Senate, this President has only been denied 10 nominees out of 215. We have one of the lowest vacancy rates in the Federal court in modern memory. Yet, they are prepared to push through this unconstitutional and unreasonable change in the Senate rules. It is the first time in the history of the Senate, it is the first time in the history of the United States, that a majority party is breaking the rules of the Senate, to change the rules of the Senate in the middle of the game. I think that is truly unfortunate.

I only hope that some Republican Senators, who value their oath of office and who value this institution, will have the same courage the Democratic Party had when it said to President Franklin Roosevelt: You have gone too far. We cannot allow you to impose your political will on the Supreme Court. They stood up to their President and said our first obligation is to the Constitution, our first obligation is to the Senate.

We will be Democrats after that, but first we must stand behind the Constitution.

I am only hoping that six Republican Senators will stand up, as Thomas Jefferson's party stood up and told him—one of our Founding Fathers—that he was wrong in trying to impose his political will on the Supreme Court and the Federal courts of the land. They had the courage to do it to their President.

How many Republican Senators will stand up to this Constitution and for the values and traditions of this great Senate?

I have a document which I ask unanimous consent be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

HISTORY OF FILIBUSTERS AND JUDGES

Prior to the start of the George W. Bush administration in 2001, the following 11 judicial nominations needed 60 (or more) votes—cloture—in order to end a filibuster:

1881: Stanley Matthews to be a Supreme Court Justice.

1968: Abe Fortas to be Chief Justice of the Supreme Court (cloture required $\frac{2}{3}$ of those voting).

1971: William Rehnquist to be a Supreme Court Justice (cloture required $\frac{2}{3}$ of those voting).

1980: Stephen Breyer to be a Judge on the First Circuit Court of Appeals.

1984: J. Harvie Wilkinson to be a Judge on the Fourth Circuit Court of Appeals.

1986: Sidney Fitzwater to be a Judge for the Northern District of Texas.

1986: William Rehnquist to be Chief Justice of the Supreme Court.

1992: Edward Earl Carnes, Jr., to be a Judge on the Eleventh Circuit Court of Appeals.

1994: H. Lee Sarokin to be a Judge on the Third Circuit Court of Appeals.

1999: Brian Theodore Stewart to be a Judge for the District of Utah.

2000: Richard Paez, to be a Judge on the Ninth Circuit Court of Appeals.

2000: Marsha Berzon to be a Judge on the Ninth Circuit Court of Appeals.

Because of a filibuster, cloture was filed on the following two judicial nominations, but was later withdrawn:

1986: Daniel Manion to be a Judge on the Seventh Circuit Court of Appeals Senator Biden told then Majority Leader Bob Dole that "he was ready to call off an expected filibuster and vote immediately on Manion's nomination."—Congressional Quarterly Almanac, 1986.

1994: Rosemary Barkett to be a Judge on the Eleventh Circuit Court of Appeals "... lacking the votes to sustain a filibuster, Republicans agreed to proceed to a confirmation vote after Democrats agreed to a day-long debate on the nomination."—Congressional Quarterly Almanac, 1994.

Following are comments by Republicans during the filibuster on the Paez and Berzon nominations in 2000, confirming that there was, in fact, a filibuster:

"... It is no secret that I have been the person who has filibustered these two nominations, Judge Berzon and Judge Paez."—Senator Bob Smith, March 9, 2000.

"So don't tell me we haven't filibustered judges and that we don't have the right to filibuster judges on the floor of the Senate. Of course we do. That is our constitutional role."—Senator Bob Smith, March 7, 2000.

"Indeed, I must confess to being some what baffled that, after a filibuster is cut off by cloture, the Senate could still delay final vote on the nomination."—Senator Orrin Hatch, March 9, 2000, when a Senator offered a motion to indefinitely postpone the Paez nomination after cloture has been invoked.